

USE AGREEMENT

This Use Agreement (the "**Agreement**") is entered into as of _____, the Effective Date, by and between the City of Calistoga, a municipal corporation ("**City**") and _____, a _____ ("**User**") (each, a "**Party**" and collectively the "**Parties**").

R E C I T A L S

User desires to use the City property located at _____ (the "**Property**") for the purpose of _____ and City has agreed to such use at a rate of \$ _____.

The parties desire to formalize their understandings regarding the use of the Property.

T E R M S

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the parties agree as follows:

1. Term. The term of this Agreement shall be for _____, commencing on _____, and terminating on _____ (the "**Term**").

2. Payment. User covenants and agrees to pay City the sum of \$ _____ per _____ with such payments sent to: City of Calistoga, 1232 Washington Street, Calistoga, CA 94515, Attention: Finance, by the first day of each month.

3. Use of Property. User will occupy and use the Property only for _____, and for no other purpose, and pursuant to the conditions set forth in Exhibit A, attached hereto and incorporated herein by reference.

4. Waiver and Indemnity. User hereby waives and releases City and its respective employees, officers, agents, boards, commissions, and assigns (hereinafter collectively referred to as "**Released Parties**") from any and all manner of rights, liabilities, claims, actions, causes of action, suits, proceedings, demands, damages, costs, expenses (including attorney fees and costs) or other compensation whatsoever, in law or equity, of whatever kind or nature, whether known or unknown, direct or indirect, foreseeable or unforeseeable, absolute or contingent ("**Claims**"), including without limitation any damage to User's belongings or property or for any harm, injury, or death to the User's employees, officers, agents or assigns, that User may have or which may arise in the future arising out of, directly or indirectly, or in any way connected with this Agreement or User's use of the Property, except for Claims arising out of the sole negligence or willful misconduct of City.

To the fullest extent permitted by law, User shall indemnify, defend and hold harmless the Released Parties from and against any and all Claims of any kind or nature arising out of this Agreement or User's use of the Property, except for Claims arising out of the sole negligence or willful misconduct of City.

5. Insurance. At its cost and expense, User shall maintain in full force and effect during the Term commercial general liability insurance with minimum limits of \$1,000,000 per

occurrence and \$2,000,000 general aggregate for bodily injury, personal injury and property damage insuring against claims which may arise from or in connection with User's occupancy and use of the Property. Such insurance shall be endorsed to include Released Parties as additional insureds, shall be primary and noncontributory with City insurance and shall provide severability of interests between or among insureds. User shall deliver certificates of insurance evidencing such insurance prior to the first date of the Term. The insurance shall be issued by insurers licensed to do business in the state of California and which are rated A:X or better by Best's Key Rating Guide and shall be endorsed to provide at least 30 days prior notification of cancellation or material change in coverage.

6. Disclaimer of Condition of Property. City makes no warranty or representation of any kind or nature regarding the Property or the fitness of the Property for the use intended by User. User has inspected the Property, knows and accepts its condition and waives any express or implied warranty against the City.

7. Removal of User's Property. User understands and agrees that User is responsible for removing its belongings and personal property from the Property prior to the end of the Term or earlier termination of this Agreement, or as provided in Exhibit A. In addition, User shall repair any damage to the Property that arises out of this Agreement to the satisfaction of City and return the Property to the condition as of the Effective Date.

8. Security Deposit. User shall provide City with a security deposit in the amount of \$_____ (the "**Deposit**"). Upon the end of the Term or earlier termination of this Agreement, if User satisfactorily complies with the terms and conditions of this Agreement, City shall promptly refund the Deposit. In the event that, upon the end of the Term or earlier termination, any belongings or personal property has not been removed or there is damage to the Property, City may, upon five days written notice to User, remove such property and repair any damage. City's costs shall be reimbursed from the Deposit and any remaining amounts of the Deposit shall be returned to User. User will be responsible for any of City's costs over and above the Deposit.

9. Compliance With Laws. User will comply with all applicable local, state and federal laws and regulations with respect to the terms and conditions of this Agreement, including, if applicable, the requirement to obtain a City of Calistoga business license.

10. Assignment. User may not assign this Agreement or any part of it without the prior written consent of City.

11. Amendments. This Agreement may be amended by mutual consent of City and User. Any amendment will be in writing, signed by both Parties.

12. Waivers. The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any applicable law will not be deemed to be a waiver of such term, covenant, condition or law or of any subsequent breach or violation of same or of any other term, covenant, condition or law. The acceptance by either Party of any fee or other payment which may become due under this Agreement will not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Agreement or any applicable law.

13. Termination. City or User may terminate this Agreement at any time upon written notice to the other Party, with such termination effective in _____ days. User will pay for use of the Property up to the effective date of the termination.

14. Notices. Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally, or by generally recognized overnight courier service, or five (5) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

For City:

City of Calistoga
1232 Washington Street
Calistoga, CA 94515
Telephone: (707) 942-2803
Attention: _____

For User:

Telephone: _____
Attention: _____

Either Party may change its address for purposes of this section by giving the other Party written notice of the new address in the manner set forth above.

This Agreement is executed by User and City as of the Effective Date.

USER:

_____, a

CITY:

City of Calistoga, a municipal corporation

By: _____
Name: _____
Title: _____

By: _____
Richard Spitler, City Manager

ATTEST:

By: _____
Richard Spitler, Acting City Clerk

APPROVED AS TO FORM:

By: _____
Michelle M. Kenyon, City Attorney

EXHIBIT A

CONDITIONS OF USE

[to be inserted]